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1. "The company's argument that its method of treating these overhead costs had been long utilized and tacitly approved can be answered by saying that consistency does not make it right. A failure to clearly reflect income over many years cannot be justified on the grounds of tenure. See *Photo-Sonics, Inc.* [Dec. 26,931], 42 T. C. 926 (1964), affirmed 357 F. 2d 656 (C. A. 9, 1966) ("an erroneous method does not become acceptable solely upon the consistent use over an extended period of time."); *Dearborn Gage Co.*, 48 T. C. 190 (1967); *Sam W. Emerson Co.*, 37 T. C. 1063 (1962); *Geometric Stamping Co.* [Dec. 21,740], 26 T. C. 301 (1956); *All-Steel Equipment, Inc.* [Dec. 30,353], 54 T. C. 1749 (1970), affirmed on this issue [72-2 ustrc ¶9660] 467 F. 2d 1184 (C. A. 7, 1972)." **William K. Coors and Phyllis E. Coors, et al.¹ v. Commissioner, 60 T.C. 368 (1973), aff'd 519 F.2d 1280 (10th Cir. 1975), cert. denied, 423 U.S. 1087 (1976)**

2. "The fact that the taxpayer consistently reported its income using the method described above does not mean that the method clearly reflects income. A failure to clearly reflect income over many years cannot be justified on grounds of tenure. *Coors v. Commissioner*, 60 T.C. 368, 395 (1973), *aff'd*, 519 F.2d 1280 (10th Cir. 1975), *cert. denied*, 423 U.S. 1087 (1976); *Madison Gas and Electric Company v. Commissioner*, 72 T.C. 521, 554 (1979), *aff'd on another issue*, 633 F.2d 512 (7th Cir. 1980).

"In the present situation, the taxpayer uses the accrual method of accounting in computing business expenses for all its operations, including expenses relating to the mortgage and commercial loan operations. In order to clearly reflect its income, the taxpayer must report interest income from commercial loans and mortgage loans on the accrual method." **Rev. Rul. 86-35, 1986-1 CB 218.**

3. "It is well established that the Service is not bound to allow a taxpayer to continue to use its method notwithstanding its consistent use. *Western Casualty & Surety Co.v. Commissioner*, 65 T.C. 897, at 911-912 (1976), *aff'd*, 571 F.2d 514 (10th Cir. 1978), *Coors v. Commissioner*, 60 T.C. 368, 395 (1973), *aff'd* 59 [519] F2d 1280 (10th Cir. 1975), *cert. denied*, 423 U.S. 1087 (1976) (argument that a method has been long utilized and tacitly approved can be answered that consistency does not make it right;

failure to clearly reflect income cannot be justified on grounds of tenure)." **PLR 200330009**

4. "Petitioner argues that consistency in the area of inventory valuation is of prime consideration, citing section 1.471-2(b), Income Tax Regs. We agree with petitioner that consistency should be given greater weight than any particular method of inventory valuation provided the method used conforms with the requirement of section 471. An erroneous method does not become acceptable solely upon the consistent use over an extended period of time. *D. Loveman & Son Export Corporation, supra.* Furthermore, we do not feel that the use of a method for a period of two and one-half years before it is questioned is a sufficient period of time for the Court to give any weight to the element of consistency." **Photo-Sonics, Inc. v. Commissioner.**

5. "Petitioner has raised three additional arguments which we think can be disposed of rather quickly. First, petitioner states that it has consistently accrued both deferred premium installments and the related commission expenses for many years and, therefore, should be entitled to continue this procedure by reason of that portion of section 1.446-1(a)(2), Income Tax Regs., which provides:

A method of accounting which reflects the consistent application of generally accepted accounting principles in a particular trade or business in accordance with accepted conditions or practices in that trade or business will ordinarily be regarded as clearly reflecting income, provided all items of gross income and expense are treated consistently from year to year.

Petitioner, however, neglects to point out that this very same section of the regulation provides that no method of accounting is acceptable, "unless, in the opinion of the Commissioner, it clearly reflects income." Petitioner has a heavy burden in overcoming respondent's broad discretion in determining whether a taxpayer's method of accounting clearly reflects income. *Commissioner v. Hansen*, [59-2 USTC ¶9533], 360 U.S. 446 (1959); *Fort Howard Paper Co.*, [Dec. 28,712], 49 T.C. 275 (1967). Not only has petitioner failed to overcome this burden, but we think respondent has affirmatively proven that petitioner's method of accounting with respect to this particular item does not result in a clear reflection of income. Thus, we think that petitioner's reliance on this section of the regulations is misplaced." **THE WESTERN CASUALTY AND SURETY COMPANY, PETITIONER v. COMMISSIONER**, 65 T.C. 897, at 911-912 (1976), *affd* 571 F.2d 514 (10th Cir. 1978)

6. "In a similar vein, we reject petitioner's contention that respondent is precluded from requiring a change of its method of accounting because the cash method is specifically authorized by statute. Such a contention is contradicted by the language of section 446(c) which specifies that the "permissible methods" are "Subject to the provisions of subsections (a) and (b)" and the language of subsection (b) which authorizes respondent to require the use of a method which clearly reflects income if the method

used by the taxpayer does not so do. Petitioner's reliance on language in *Hallmark Cards, Inc. v. Commissioner* [Dec. 44,502], 90 T.C. 26, 31 (1988) (respondent "may not reject * * * a method of accounting * * * which is specifically authorized in the Code or regulations") is misplaced. That language as well as similar language in *Orange & Rockland Utilities v. Commissioner* [Dec. 42,884], 86 T.C. 199, 215 (1986), was made in the context of applying the all-events test of accrual accounting and was not directed to a situation where, as is the case herein, use of the inventory method is required. Similar reasoning disposes of petitioner's reliance on *Peninsula Steel Products & Equipment Co. v. Commissioner* [Dec. 39,113], 78 T.C. 1029, 1052 (1982), where we held that respondent could not deprive a taxpayer of the right to use both the completed contract and inventory methods of accounting where no inconsistency appeared and such a synthesis of methods was not precluded by the regulations." **J.P. Sheahan Associates, Inc. v. Commissioner, T.C. Memo. 1992-239.**

7. "Our role, however, is not to weigh and determine the relative merits of systems of accounting, *United States v. Catto, supra* at 114, nor to determine in our own judgment whether petitioner's method clearly reflected income, but to determine whether there is an adequate basis in law for respondent's determination that petitioner's method did not clearly reflect income. *RCA Corp. v. United States* [81-2 [ustc ¶9783](#)], 664 F.2d 881, 886 (2d Cir. 1981), cert. denied 457 U.S. 1133 (1982)." **Applied Communications, Inc. v. Commissioner, T.C. Memo. 1989-469.**